

May 7, 2001

I N T E R M U N I C I P A L      A G R E E M E N T

AGREEMENT made this 7th day of May 2001 by and between the CHILMARK BOARD OF SELECTMEN ("Selectmen") and the MARTHA'S VINEYARD LAND BANK COMMISSION ("Land Bank");

WHEREAS the Land Bank and its Chilmark Town Advisory Board (the "Advisory Board") seek to conserve the property shown on the attached Exhibit "A" (the "Premises"); and

WHEREAS the Chilmark Town Meeting has voted to purchase the farmstead (the "Farmstead") on the property in order to work with the Land Bank to restore the Premises as a working farm, to be owned by the public and leased to a private farmer; and

WHEREAS the Town Meeting has authorized the Selectmen to enter into an intermunicipal agreement with the Land Bank to define each party's responsibilities and privileges with respect to the Premises; and

WHEREAS the parties wish to memorialize their understanding and mutual good will with respect to the project, recognizing that practical considerations in the future may give rise to the need to consider future amendments;

IT IS HEREBY AGREED that:

- (1.) The Land Bank will enter into a purchase-and-sale agreement with the owner of the Premises, with a clause in the contract allowing the Land Bank to assign the Farmstead to the Town.
- (2.) At the closing, the Land Bank will assign the Farmstead to the Town and the Town will pay \$250,000 for it. The

Farmstead shall be of a size and configuration necessary to enclose all of the existing buildings in a single lot, with the expectation that approximately three acres would be sufficient to do so. The septic system will be upgraded at seller's expense, subject to a cap of \$15,000; expenses exceeding this amount will be the responsibility of the Town.

(3.) The deed to the Town will state that the Farmstead has been acquired for conservation purposes, so that the Farmstead will remain in public ownership in perpetuity. The deed shall also grant to the Land Bank an architectural restriction so that all buildings on the Farmstead shall conform to traditional Martha's Vineyard farmhouse and barn architecture. The Land Bank agrees not to exercise its rights under the architectural restriction without first having sought the input of both the Chilmark Historical Commission (or a like entity) and the Advisory Board.

(4.) Use of the Land Bank's portion of the Premises shall be governed by the attached management plan, appearing as Exhibit "B", as it may be amended from time to time and subject to the approval of the Massachusetts executive office of environmental affairs. No residential structures shall be constructed in the Land Bank's portion of the Premises; agricultural structures may be constructed in the Land Bank's portion of the Premises, in conformity with the Farm Plan described below. The Land Bank's portion of the Premises shall be encumbered with an easement running in favor of the Town to allow the Town [a] to site a well and/or a septic system on the Land Bank

property if needed for the Farmstead and [b] to pass and repass for the purpose of access to the Farmstead and to connect utilities to it, provided that any land disturbed as a result of the exercise of such easement shall be thereafter returned to natural grade and a natural state.

- (5.) A life-estate in the Farmstead shall be retained by Robert Silva. It is attached as Exhibit "C". For the purposes of the life-estate agreement, "Fee-Holder" shall mean "Selectmen".
- (6.) Mr. Silva shall retain a personal easement over the balance of the Premises, so that he may use them for agricultural purposes. The Land Bank will allow public use of this area during the term of Mr. Silva's life-estate in such a manner as not to disturb Mr. Silva. The Land Bank may mow this area, as needed.
- (7.) At the time of the expiration of Mr. Silva's life-estate, the Selectmen shall appoint a farm committee ("Farm Committee"), at least two of whose members shall simultaneously be members of the Advisory Board.
- (8.) The Farm Committee shall draft a farm plan ("Farm Plan"). The Farm Plan shall divide the Premises into two separate areas: [a] active agricultural area (which shall include the farmstead) and [b] general conservation area. The Farm Plan shall recommend specific types of agriculture to be conducted in the active agricultural area. The Farm Plan shall also recommend a process for soliciting and selecting a farmer to lease the active agricultural area. The Farm Plan shall be approved by the Selectmen,



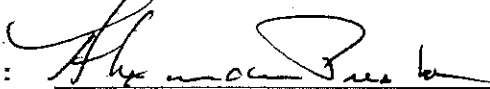
Advisory Board and Land Bank, in the form of an intermunicipal agreement. The portion of the Farm Plan affecting the Land Bank's portion of the Premises is subject to the approval of the Massachusetts executive office of environmental affairs and thus may be amended from time to time.

- (9.) The Selectmen and Advisory Board shall seek proposals from candidate farmers to implement the Farm Plan. The Selectmen and Advisory Board shall jointly select the candidate who, in their opinion, is best suited to farming the Premises in a productive and presentable manner and who will practice sound soil conservation and enhancement techniques. The Selectmen and the Land Bank shall each enter into a lease with this candidate for their respective portions of the Premises under the intermunicipal agreement. The Selectmen and Advisory Board shall not discriminate on the basis of residency in making their decisions.
- (10.) Residential use of the Farmstead will be limited to a single-family dwelling and a garage or barn apartment, except that the Selectmen may, after no fewer than ten years have elapsed since the expiration of Mr. Silva's life-estate and after all efforts on the Town's and Land Bank's part to restore the Premises to a working farm have failed, seek to revise this Agreement with the Land Bank so as to allow the use of the Farmstead buildings as Town-owned housing for visiting agricultural or conservation students or for municipal employees or otherwise for affordable housing.

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IN WITNESS WHEREOF the parties hereto have set their hands and seals this \_\_\_th day of May 2001.

by:

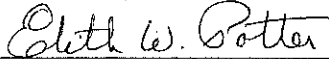


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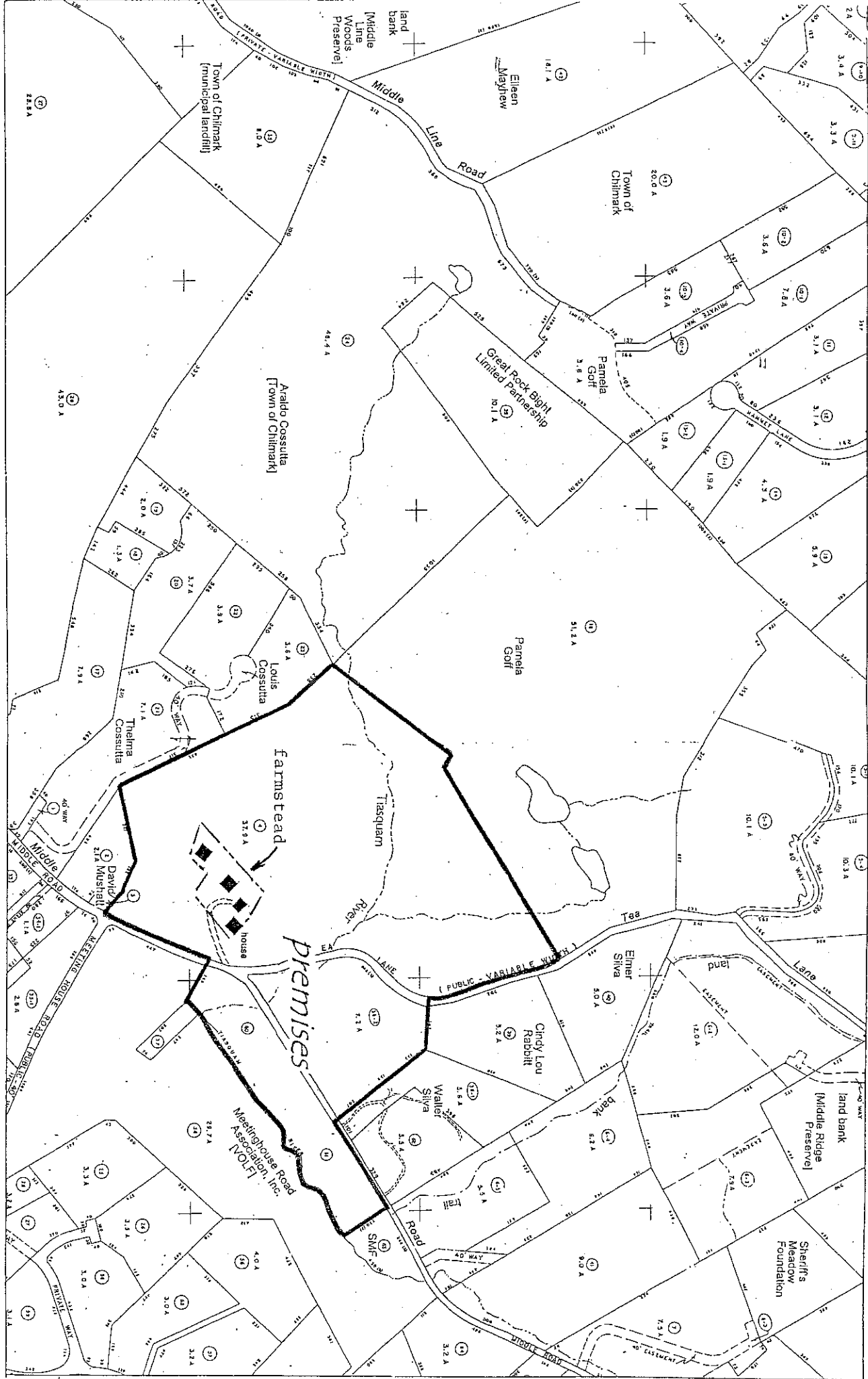
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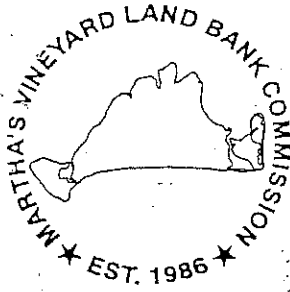
Alexander Preston, Chairman duly authorized  
CHILMARK BOARD OF SELECTMEN

by:



~~Edward Vincent, Jr., Chairman duly authorized~~  
MARTHA'S VINEYARD LAND BANK COMMISSION  
Edith W. Potter, Secretary-Treasurer, duly authorized





## Martha's Vineyard Land Bank Commission

### *Tea Lane Farm preliminary management plan*

- |                           |   |
|---------------------------|---|
| acreage                   | 50.0 acres  |
| tax parcel nos.           | 12-4, 12-38.2, 12-60 and 12-61  |
| nature conservation goals | <ul style="list-style-type: none"><li>(1) conduct biological survey of property to serve as base for formulation of management objectives</li><li>(2) identify rare and endangered species, if any, and create plan to protect and encourage their populations</li></ul>  |
| natural products goals    | <ul style="list-style-type: none"><li>(1) create farm plan which maps two areas — one to be used by Robert Silva as part of his life-estate and the second to be leased to a farmer after a public request-for-proposals — both which areas will, after the life-estate has expired, consolidate and be leased to a farmer</li><li>(2) study land in order to determine whether to allow hunting here, with a predisposition to allowing it</li></ul> |
| scenic goals              | <ul style="list-style-type: none"><li>(1) maintain as fields all uplands which are visible from public roads</li><li>(2) maintain architectural restrictions over existing farmhouse in order to preserve its character and scale but allow modest expansion in the rear</li></ul>  |

*recreational goals*

- (1) open property for hiking, non-motorized biking and horseback-riding and other passive uses; maintain existing trails and install new trails, as needed and appropriate
- (2) work to connect property with other conservation areas and neighborhoods by means of trails and nearby roads
- (3) direct visitors to park along the shoulders of the Meetinghouse Road, in lieu of creating on-premises trailhead

*administrative goals*

- (1) oversee and police land on regular basis in order to maintain property as an attractive conservation area
- (2) complete management plan before December of 2003

approved by vote of the Chilmark town advisory board: November 15, 2000

approved by vote of the land bank commission: February 12, 2001



BK837PG688

LIFE ESTATE AGREEMENT

This AGREEMENT is made as of this 14<sup>th</sup> day of June, 2001 between ROBERT J. SILVA, residing at Middle Road and Tea Lane, Chilmark MA (the "Estate Holder") and the TOWN OF CHILMARK (together with its successors and assigns, "Fee Holder").

W I T N E S S E T H:

WHEREAS, Fee Holder is the owner in fee simple of certain real property located in the Town of Chilmark, County of Dukes County, Commonwealth of Massachusetts, more fully described in Exhibit "A" attached hereto and hereby made a part hereof, together with the buildings and improvements located thereon (said parcel of real property and buildings and improvements, collectively, the "Premises").

WHEREAS, Fee Holder's interest is subject to a life estate in the Premises for the benefit of Robert J. Silva pursuant to the terms of this Agreement (the "Life Estate"); and

WHEREAS the parties wish to set forth their respective obligations, responsibilities and rights respecting the Premises and their interests therein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

1. Rights and Obligations of Estate Holder. Estate Holder shall be entitled to, and Fee Holder hereby grants to Estate Holder, the possession, use and enjoyment of the Premises during Estate Holder's natural lifetime, subject to the following terms and conditions, which terms and conditions are agreed to by both Estate Holder and Fee Holder:

(a) The Premises shall be used only as and for a personal residence and or agricultural/farming purposes.

(b) No buildings, structures or improvements shall be constructed upon the Premises without Fee Holders' prior written consent.

(c) The Estate Holder shall have exclusive (subject to the terms and conditions hereof) use and occupancy of the Premises and all structures thereon, but the Fee Holder shall retain the right to enter the Premises and the structures thereon from time to time on reasonable advance notice to, and approval of, the Estate Holder (which approval shall not be unreasonably

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withheld or delayed) for the purpose of inspecting the structures, and shall further retain the right to create, use and maintain trails on the Premises and the right to mow, brush cut, and to cut trees and limbs on the Premises provided the same does not materially interfere with Estate Holder's use and occupancy of the Premises.

(d) The Premises shall not, in whole or in part, be leased, licensed, or made subject to any occupancy rights in favor of any third party and Estate Holder shall not convey, transfer, grant, assign, mortgage, encumber or pledge to any party the whole or any part of the Premises or the Life Estate, provided, however, that (x) Estate Holder may rent or lease a room or rooms on the Premises to a professional care giver providing care to Estate Holder, and (y) if after three (3) years from the date hereof Estate Holder becomes incapacitated in a manner which requires that he live in an assisted living situation (including with friends or relatives) not on the Premises, Estate Holder shall have the right to lease the Premises during the remaining term of the Life Estate under the following terms and conditions:

- (i) Estate Holder shall give Fee Holder forty-five (45) days advance notice of his intent to lease the Premises, which notice shall set forth the manner of incapacity, the Lessee to whom Estate Holder intends to lease the Premises, and all of the material terms and conditions of the lease arrangement with the proposed lessee (the "Notice to Rent"). Fee Holder shall have the first refusal right during such forty-five (45) day period after such notice is given to lease the Premises, or to find another party to lease the Premises, on substantially the same terms and conditions. If the Fee Holder notifies Estate Holder within such forty-five (45) day period of Fee Holder's intention to exercise its first refusal right, then the parties shall enter into a mutually satisfactory lease arrangement and the tenancy shall commence not later than fifteen (15) days after the date on which Fee Holder gives such notice to exercise its first refusal right. If no such notice is given by Fee Holder within such forty-five (45) day period, Estate Holder shall be free to lease the Premises to such proposed lessee on terms not less favorable than those set forth in the

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Notice to Rent.

- (ii) Any rental by Estate Holder (exclusive of a rental by Fee Holder or its designee) hereunder shall only be to a single family or to not more than three (3) unrelated persons.
- (iii) Such lessee shall not be permitted to sublease or assign its rights under the lease without Fee Holder's prior written consent.
- (iv) All risks related to such rental shall be borne by the Estate Holder, and the Estate Holder will indemnify and hold harmless the Fee Holder against all claims, losses, costs and expenses in any way related to such rental, except such claims, losses, costs and expenses which are directly the result of Fee Holder's actions.
- (v) Any and all repair and maintenance obligations owed to such Lessee, whether under the terms of the lease or otherwise, shall be borne by Estate Holder.

2. Insurance. Estate Holder shall maintain in effect at all times, at Estate Holder's cost, a policy of all-risk casualty insurance covering the Premises, which policy shall cover one hundred percent (100%) of the full replacement cost of the Premises and shall name Fee Holder as an additional insured. In addition, Estate Holder shall procure, keep in force, and pay for liability insurance indemnifying Fee Holder and Estate Holder against all claims and demands for injury to or death of persons or damage to the property which may be claimed to have occurred on the Premises in amounts consistent with such insurance as is normally carried by homeowners. Such insurance shall be effected with insurers qualified to do business in Massachusetts and in good standing therein insuring Fee Holder as well as Estate Holder, as their interests may appear, against injury to persons or damage to property as provided. Estate Holder shall provide evidence of such insurance to Fee Holder annually, and at other times upon Fee Holders' request.

3. Damage to or Destruction of the Property. If any of the Improvements are damaged or destroyed by casualty, Estate Holder shall, to the extent of the casualty insurance described in Paragraph 2 (inclusive of any applicable deductible), repair, replace or reconstruct the portion of the Improvements so damaged or destroyed, and the proceeds of the casualty insurance

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described in paragraph 2 shall be applied to such repair or reconstruction.

4. Maintenance - Structural and Utility Systems. Estate Holder may, at his expense, or Fee Holder may, at its expense, maintain, repair and renew all mechanical and utility systems servicing the Premises, including electrical, plumbing and heating and all structural and exterior repairs to the Building provided that neither party shall be obligated to do so.

5. Maintenance - Grounds and Interior. Estate Holder shall maintain the interior of the Premises (exclusive of structural matters and utility systems which are addressed in Section 4 above) in good repair, order and condition. Estate Holder shall keep the Premises free of all unsightly rubbish and debris.

6. Surrender of Life Estate. The Estate Holder shall have the right at any time to surrender to Fee Holder his Life Estate by giving written notice thereof to Fee Holder, and any such surrender shall become effective upon the giving of such notice. Upon the effective date, the Life Estate shall terminate, and neither Fee Holder nor the Estate Holder shall have any further rights or obligations hereunder, except for obligations incurred or rights accrued prior to the date of surrender. Any notice given to Fee Holder pursuant to this Section shall be in recordable form. Estate Holder shall direct the executor of his will to notify Fee Holder upon his death.

7. Payment of Taxes and Assessments. Estate Holder shall pay all municipal taxes, charges and assessments that may become due and payable during the term of this Life Estate.

8. Remedies for Breach. If any of the conditions set forth herein is violated and such violation continues for Thirty (30) days after notice thereof is given by one party to the other identifying the condition violated (or, where such violation is capable of being cured but is not reasonably capable of being cured within such 30-day period, if such party fails to commence curing such violation within such 30-day period, or fails thereafter to diligently and continuously prosecute to completion all steps necessary to fully cure the same), then the party giving such notice, at its option, may bring an action at law or in equity in a court of competent jurisdiction to enjoin the violation by temporary or permanent injunction, to recover the damages to which such party may be entitled for violation of the terms hereof, and to require the restoration of the Premises to the condition which existed prior to such violation.

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9. Notices. All notices and communications under this Agreement shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed below:

If to Fee Holder: Town of Chilmark  
P.O. Box 119  
Chilmark, MA 02535  
ATTN: Executive Secretary

If to Estate Holder: Robert J. Silva  
c/o Elmer Silva  
P.O. Box 993  
Vineyard Haven, MA 02568

Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

10. Successors and Assigns. This Agreement (a) is binding upon and shall inure to the benefit of Fee Holder and its successors and assigns and (b) shall inure to the benefit of Estate Holder and be binding upon Estate Holder and his assigns, executors and other personal representatives.

11. Miscellaneous Provisions.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(b) The failure of a party to insist upon the strict performance of any provision of this Agreement shall not be deemed a waiver of said provision or any other provision contained in this Agreement. No provision of this Agreement may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

(c) In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable to any extent, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement (or the provision in question

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to the extent not invalid, illegal or unenforceable), and this Agreement shall be enforceable to the fullest extent permitted by law.

(d) This Agreement embodies the entire agreement between the parties regarding the subject matter hereof. Either party, at its own expense, shall be entitled to cause a memorandum or notice of this Agreement to be recorded in the Dukes County Registry of Deeds and/or the Dukes County Registry District Office of the Land Court.

(e) This Agreement is not intended to grant to Fee Holder any possessory rights in the Premises other than those arising by virtue of their ownership of the Premises and as set forth herein.

IN WITNESS WHEREOF this Agreement has been duly executed under seal by the parties as of the day and year first above written.

Witnessed by:

ESTATE HOLDER

Robert M. Silva

Robert J. Silva  
Robert J. Silva

FEE HOLDER

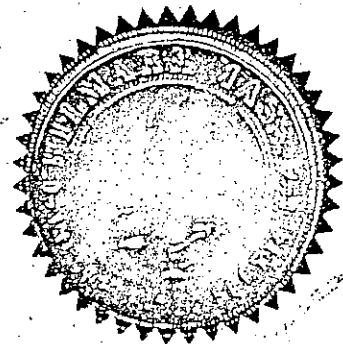
TOWN OF CHILMARK

Alexander H. Preston

By: Alexander H. Preston  
Alexander H. Preston,  
Selectman

Warren M. Doty

By: Warren M. Doty  
Warren M. Doty, Selectman






BK837PG694

COMMONWEALTH OF MASSACHUSETTS

DUKES COUNTY, SS.

June 14, 2001

Then personally appeared the above-named Robert J. Silva, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed,


  
Notary Public  
My Commission Expires: 1/19/07

COMMONWEALTH OF MASSACHUSETTS

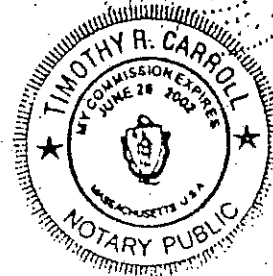
DUKES COUNTY, SS.

June 13, 2001

Then personally appeared the above-named Alexander H. Preston and Warren M. Doty, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed,

  
Notary Public  
My Commission Expires:

N:\011\01\June\wvlb-silva life estate.agr.wpd



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EXHIBIT A

The land with the improvements thereon located in Chilmark,  
County of Dukes County, Commonwealth of Massachusetts, and more  
particularly described as Lot 2 on a plan entitled "Plan of Land  
in Chilmark, Mass. Surveyed for The Heirs of Virginia Silva May  
18, 2001 Scale 1" = 60'... Vineyard Land Surveying, Inc. P.O.  
Box 421 West Tisbury, MA 02575" recorded in the Dukes County  
Registry of Deeds as Chilmark Case File No. 341.

Edgartown, Mass. June 14, 2001  
at 1 o'clock and 48 minutes P M  
received and entered with Dukes County Deeds  
book 837 page 688

Attest:

James P. Power Register